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OF 2002.

..Appellant.

Versus.

..Respondent.

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Mr. D. M. Shah Adv. appointed for the appellant.

Mrs. M. M. Deshmukh A.P.P. for the State.

**CORAM: S. B. MHASE &  
SMT. NISHITA MHATRE, JJ.**

**DATE: MARCH 9, 2007.**

**ORAL JUDGMENT (PER S.B.Mhase, J.).**

1. This appeal is directed against the judgment and order passed by the First Ad-hoc Additional District & Sessions Judge, Nashik on 9.3.2002 in Sessions Case No. 17 of 2002 wherein the accused - appellant was found guilty of an offence punishable under section 302 of the Indian Penal Code, 1860 and he is sentenced to suffer imprisonment for life. For the sake of brevity and convenience, the appellant is hereinafter referred to as "the accused."

2. According to the prosecution, deceased -

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Sarubai @ Saraswatibai was residing at hut No. 123, Rasulbaug Kabrastan hutments and after the death of her husband the accused - Sanjay started to live with her. On the day of incident, i.e., in between the night of 31st August 2001 and 1st September 2001 at about 2.00 a.m., Pw.2 when she was returning from her foster sister's house noticed that the quarrel between the accused and deceased Sarubai was going on in the hut, and that the accused was demanding Rs.700 to 800 from the deceased which he had kept with the deceased; since it was an usual affair between them, Pw.2 did not intervene and went to sleep. When the next day morning PW2 had taken a tea for the deceased she found that the house of the deceased was closed by chaining from the outside and lock was hanging without being locked. So PW-2 opened the door and went inside and found that Sarubai was lying on the floor of the house and there was a quilt and a pillow and the deceased was bleeding through her mouth, ears and nose and there was a piece of cloth lying as a ligature of black colour near the neck. PW-2 made shouts and thereafter people gathered. The report was lodged with the police Exhibit -13. After Inquest Panchnama, the post mortem was carried out. The Post Mortem report shows that the deceased had died due to asphyxia caused by strangulation. The accused was found absconding. The police arrested him on 8th of September 2001 and attached his clothes, more specifically which had blood stains viz., shirt having

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blood stains on both sleeves and near the back and chest. The said articles were attached by preparing the arrest panchnama. After completing the investigation, the charge sheet was filed as against the accused and the accused was convicted as stated above.

3. Learned counsel who appeared for the appellant submitted that the only evidence is of PW-2 which according to the prosecution is ocular witness. However, the learned counsel submitted that PW-2 had not seen the incident, she had only heard the quarrel and this witness has assumed that the person quarrelling with the deceased was accused - Sanjay. Therefore it is submitted that there is no direct evidence on record. The learned counsel submitted that if the only so called eye witness is discarded there is no evidence on record to hold the accused guilty, and therefore prayed for setting aside the conviction.

4. Mrs. M.M. Deshmukh, learned APP for the State submitted that Sangita is the eye witness and that she has identified the accused because of his voice as the accused was residing with the deceased since 5 to 6 years, and PW-2 was residing at a distance of 15 feet from the said house of the deceased. It appears that this witness (PW-2) is the most natural and trustworthy witness. Learned APP further submitted that the blood group of the deceased was "A" as reflected from the

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clothes of the deceased and also from the blood collected from the dead body. She invited our attention to the fact that the clothes of the accused were seized at the time of the arrest and it has been found in the Chemical Analyser's report that the blood stains available on the shirt of the accused were of "A" group. Thus, it is established that the blood of the deceased was found on the person of the accused. Thus, the evidence of PW-2 stands corroborated by the Chemical Analyser's report. Therefore, according to the learned APP for the State the prosecution has established the guilt of the accused beyond reasonable doubt and the conviction as recorded by the learned Sessions Judge, Nashik is just and proper and it is therefore, prayed that it may not be interfered with.

5. In order to prove the guilt of the accused the prosecution has examined in all five witnesses. Out of those five witnesses, PW-2 is the only eye witness. PW-1 is Dr. Keshav Bhaskarrao More who carried out post mortem. PW-4 is the witness from whom the accused has demanded Rs.200/- for performing the last rites on the dead body of the deceased in the morning of 1.9.2001. PW-3 is a witness to the spot panchnama and PW-5 is the Investigating Officer.

6. It is not in dispute that the deceased Sarubai died because of the asphyxia due to

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strangulation. PW-1 has stated that the post mortem was carried out at about 7.00 to 7.30 p.m. on 1.9.2001; and on the dead body of the deceased the ligature mark over the neck over the right side of neck extending from midline anteriorly, 7 cms just below chin just below hyoid bone, 2 cms in width, 17 cms in length, 7 cms below right occipital protuberance were found externally. The internal organs were found to be congested. He has found that the deceased had died due to the asphyxia due to strangulation. He has stated that strangulation by herself is not possible by article no.2 - ligature. Thus he has ruled out the case of suicidal death. Thus, what we find is that the prosecution has established that the death of Saraswatibai was homicidal one.

7. Now, the question arises as to who is responsible for this homicidal death. PW-2 is the eye-witness. PW-2 has stated that deceased Saraswatibai was residing in front of the house of this witness and that initially the deceased was living with her husband, but after the death of her husband the accused started living with the deceased. So far as the incident is concerned, PW-2 has stated that on that night she returned home by about 2.00 a.m. in the morning; There used to be frequent quarrels between Saraswatibai and the accused and their quarrel was an usual affair. On that day also they were quarrelling on the use of money

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since it was the charge of Saraswatibai that the accused had taken to "Gard". The accused was demanding Rs. 700 to 800 from the deceased which according to him he had kept with the deceased. Since it was an usual matter the witness stated that she did not enter in between them and entered her house, and after taking food went to bed. However, till the time she went to bed the quarrel between Saraswatibai and accused was going on. This witness has further stated that on the next day morning at about 9.00 O'clock this witness (PW-2) had taken tea to Saraswatibai, at that time it was found that house of Saraswatibai was closed by chaining from outside and lock was hanging there without being locked. Therefore, after removing the lock, she entered the house and found that Sarubai was lying dead on the quilt on the floor of the house, she was bleeding through her mouth, nose etc and there was a piece of cloth, lying as ligature of black colour near her neck. She made shouts and therefore people gathered. She stated that she lodged the report Exhibit-30 to the police station and thereafter the investigation has started. She has identified the clothes which were found near the dead body.

8. It is to be noted that in the cross examination nothing has transpired which would lead to impeach this witness (PW-2). On the contrary in the cross examination it has been asked on behalf of the

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accused when she (PW-2) had not gone there how could she say that it was accused - Sanjay only throughout present and quarrelling with Sarubai, and this witness has answered that she knew the voice of the accused, since it was a daily matter and there was no reason to say it was not the accused, and also similarly nobody used to visit the house of Sarubai except Sanjay. Thus, the witness (PW-2) has stated that since the voice of Sanjay was known to her, she (PW-2) has identified Sanjay and quarrel between them. Since this witness (PW-2) had stated in examination in chief that she had entered the house with a glass of tea and upon seeing the dead body of Sarabau she was taken aback and glass of tea slipped out her hand and fallen down, a question was asked as to where the glass particles in respect of that glass are when it had fallen down from the hands of this witness. The witness has replied that it was a steel glass and therefore it had not broken. Thus taking into consideration the evidence of PW-2 we find that this witness is true, genuine, consistent and she is a reliable witness and we accept her testimony.

9. It is to be noted that the clothes of the accused were seized at the time of arrest. So also the clothes of the deceased were recovered after the post mortem. From the spot also certain articles were recovered by the police. The blood of the accused was collected and the same was sent for examination to the

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Chemical Analyser. It is seen that the blood group of the accused was/is "O" while the blood group of the deceased was "A" and it is pertinent to note that on the clothes of the accused, more specifically shirt which has been seized by the police from the person of the accused when he was arrested, it had blood stain and on analysis it was found that those blood stains to be of "A" blood group matching with the blood group of the deceased. This establishes that at the time of the death of the deceased the accused was along with the deceased and therefore it corroborates the testimony of PW-2, namely, that at that night the quarrel was going on between the deceased and the accused. This corroborative evidence is circumstantial which fortifies the testimony of PW-2.

10. Apart from this there is evidence of PW-4 who was residing in the same locality. PW-4 has stated that on 1st September 2001 at about 6.00 a.m. the accused had been to him, demanding Rs.200 for performing the last rites of the deceased. That shows that this evidence is also from a reliable witness and nothing has been transpired in the cross examination of the said witness. Therefore, it establishes that at 6.00 O'clock in the morning the accused was aware of the fact that he had caused the death of Sarubai. And, if the accused was not responsible for the death of Sarubaia the accused should have reported the fact of death of

Sarubai to the police because the death was not natural one. But it appears that the accused wanted to dispose of the dead body by performing the last rites without informing the police. However, that has not materialised and thereafter he absconded from the place because when PW-2 visited the house of the accused, the accused was not found there; and not only that when the accused was residing in the said house the presence of the accused in the said house would have been natural. But it is to be noted that after the death of Sarubai the accused was not found in the house. Not only that but thereafter he was arrested after about 8 days, that shows that he was absconding. This factor is not in consonance with the innocence of the accused and leads to the only inference that the accused is guilty of the offence.

11. Therefore, taking into consideration all these circumstances together it has been conclusively established that the death of Sarubai was caused by the accused only and nobody else; and the prosecution has rightly established the guilt of the accused. What we find is that, therefore the conviction recorded by the Sessions Judge Nashik is proper and requires to be confirmed. We therefore confirm the conviction and sentence and dismiss the appeal. Therefore we pass the following order.

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**ORDER**

Appeal is dismissed.

(SMT. NISHITA MHATRE, J.)

(S.B.MHASE, J.)